

CHAPTER 7 DISCIPLINE AND GRIEVANCE PROCEDURE

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7-1 Disciplinary Action

An employee whose conduct constitutes grounds for disciplinary action shall be subject to any of the following discipline: reprimand, suspension without pay, involuntary transfer to a position with less remuneration or discharge. This provision shall not be construed as requiring that discipline proceed in any particular order, and any one of the foregoing disciplinary actions may be imposed for any incident, including for a first offense.

7-2 Review of Specified Disciplinary Actions: Discharge, Demotion, or Suspension of Over Two (2) Days without Pay

The review process set forth in this section shall apply whenever an employee is subject to any of the following disciplinary actions: discharge, involuntary transfer to a position with less remuneration, or suspension of over two (2) days without pay. Consistent with Utah Code Section 10-3-1105, the review process as set forth in this section shall not apply to:

- (a) an employee appointed by the mayor or other person or body exercising executive power;
- (b) the police chief;
- (c) the fire chief;
- (d) the assistant fire chief;
- (e) the ambulance chief;
- (f) a head of a department (sometimes referred to as director);
- (g) a deputy of a head of a department;
- (h) a superintendent;
- (i) a probationary employee;
- (j) a part-time employee;
- (k) a temporary or seasonal employee; or
- (l) a paid-on-call employee.

The disciplinary review process for employees (as defined in this section) who are subject to discharge, involuntary transfer to a position with less remuneration, or suspension of over two (2) days without pay, shall be as follows:

STEP ONE: PRE-DETERMINATION HEARING

The employee shall be given written notice of the hearing which includes an explanation of the conduct constituting the grounds for the potential disciplinary action against the employee and notice that discipline up to and including discharge, involuntary transfer to a position with less remuneration and/or suspension of over two (2) days without pay is being considered. The Pre-determination Hearing shall be conducted by the Mayor or his/her designee for the purpose of allowing the employee to respond to the conduct constituting grounds for the disciplinary action and present information the employee believes is relevant to the decision. A decision as to the disciplinary action to be taken, if any, shall be made by the Mayor and the employee shall be notified in writing within a reasonable time after the hearing. In the event disciplinary action is imposed, the Mayor or his/her designee shall provide the employee with written notice of the disciplinary action along with a written explanation of the employee's rights for appeal, if any.

STEP TWO: APPEAL TO PERSONNEL BOARD (APPEAL BOARD)

In the event the Pre-determination Hearing results in the employee's discharge, involuntary transfer to a position with less remuneration, and/or suspension of over two (2) days without pay, the employee has the right to appeal the decision of the Mayor to the Brigham City Employee Personnel Board, which shall then act as the "appeal board" required by §10-3-1106 of the Utah Code. The Brigham City Employee Personnel Board shall consist of five (5) members, three (3) of whom shall be those previously elected from the Brigham City Employee Coordination Committee as set forth in section 2-3 of this manual, and two (2) of whom shall be members of the City Council, selected by the Mayor. In the event any of the three (3) members elected from the Brigham City Employee Coordination Committee happen to be employed in the same department as the employee appealing the disciplinary decision, the Mayor shall select replacement members (to serve on the board for purposes of the appeal) from among all of the current Brigham City employees.

The employee's appeal to the Brigham City Employee Personnel Board must be in writing and delivered to the City Recorder within ten (10) days of the written notice of disciplinary action. Upon receipt of the appeal, the City Recorder shall forthwith refer the matter to the Brigham City Employee Personnel Board, which shall then fully hear and determine the matter. In connection therewith, the Brigham City Employee Personnel Board shall schedule a hearing on the appeal. At the hearing on the appeal, the Mayor's designee shall conduct the hearing and present all evidence on behalf of the City and shall allow the employee:

- (a) to appear in person and to be represented by legal counsel (at the employee's expense);
- (b) to present his/her own witnesses and submit his/her own evidence;
- (c) to have a public hearing;
- (d) to confront any witnesses whose testimony is to be considered; and
- (e) to examine the evidence to be considered.

The Brigham City Employee Personnel Board shall receive and consider all of the evidence reasonably presented by the Mayor's designee on behalf of the City and all of the evidence

reasonably submitted by the employee, or on behalf of the employee, before making its decision.

The decision of the Brigham City Employee Personnel Board shall be by secret ballot and shall be certified in writing (including findings of facts) to both the City Recorder and the employee within fifteen (15) days from the date of the final day of the appeals, except for good cause, the Brigham City Employee Personnel Board may extend this period to a maximum of sixty (60) days if the City and the employee both consent to such an extension. The Brigham City Employee Personnel Board may only uphold or reverse the City's action and may not modify it.

In the event the decision of the Brigham City Employee Personnel Board does not uphold the employee's discharge, involuntary transfer to a position with less remuneration ,and/or suspension of over two (2) days without pay, the written decision of the Brigham City Employee Personnel Board shall provide that the employee shall receive either the employee's salary for the period of time during which the employee was discharged or suspended without pay, or any deficiency in the employee's salary for the period of time during which the employee was demoted to a position of less remuneration. In the event the decision of the Brigham City Employee Personnel Board does uphold the employee's discharge, involuntary transfer to a position with less remuneration, and/or suspension of over two (2) days without pay, the written decision of the Brigham City Employee Personnel Board shall contain a written explanation of the employee's rights for appeal.

STEP THREE: APPEAL TO THE COURT OF APPEALS

Any finding, action, or order of the Brigham City Employee Personnel Board may be appealed by either the employee or City by filing with Utah Court of Appeals a notice of appeal no later than 30 days from the date of the issuance of the final action or order of the Personnel Board.

7-3 Review of Other Disciplinary Actions or Grievances

Any employee who receives discipline which does not result in the employee's discharge, involuntary transfer to a position with less remuneration, or suspension of over two (2) days without pay or any employee who is aggrieved by any action which is related to working conditions, relationships, City rules or regulations, and which cannot be resolved through informal discussions with the employee's immediate supervisor, may have the matter reviewed as set forth in this section. An employee may use another individual as a spokesman at any point in the process, but the employee shall be present and available for questions and discussion throughout the process.

Grievances under this section shall include, but not be limited to such matters as employee-supervisor relationships, duty assignments not affecting job classification, shift and job location assignments, hours worked, working facilities and conditions, policies for granting leave and similar matters. Similar grievances may be consolidated and processed together as a single issue. Every effort shall be made by the involved parties to resolve grievances at the lowest possible level.

Reasonable time may be spent during working hours by an employee or employee representatives

to investigate and process a specified grievance. Failure by the employee to proceed to a higher step within the time period specified will terminate the grievance. Failure by management to render a decision within the allotted time at any step constitutes a denial, and the employee may proceed to the next step.

If an employee is denied the opportunity to present a grievance as prescribed by this section, or if the employee is threatened or subjected to duress when presenting the grievance, the employee may so notify the Brigham City Council in writing. The Brigham City Council shall then authorize an investigation of such complaints and, based upon findings, may present charges and recommend disciplinary action against any person who was derelict or discriminatory in considering the grievance.

The review of any discipline other than as set forth in section 7-2 above, or any other employee grievance shall be as follows:

STEP ONE: IMMEDIATE SUPERVISOR AND MAYOR'S OFFICE

All requests for review of any employee discipline other than as set forth in section 7-2 above, or any other employee grievance shall be made in writing and delivered to the employee's immediate supervisor and the Mayor's Office within ten (10) days after the employee receives notice of the disciplinary action or the occurrence of the events giving rise to a grievance. Said ten (10) day limitation may be waived if, through no fault of the employee, the employee was unaware of the discipline or grievance before the time limitation expired.

A Mayor's Office representative shall then meet with the employee to discuss the matter, and conduct any investigation appropriate for the circumstances. Upon completion of the investigation by the Mayor's Office, the Mayor's Office representative may reverse, uphold or modify any disciplinary decision and/or otherwise resolve the grievance. The decision of the Mayor's Office shall be in writing and delivered to both the employee and the employee's immediate supervisor. The written decision of the Mayor's office shall also set forth the manner, if any, in which the employee can pursue the matter to the next step.

STEP TWO: BRIGHAM CITY EMPLOYEE PERSONNEL BOARD

If the employee is not satisfied with the decision of the Mayor's Office, the employee may deliver a written notice to the Mayor's Office within five (5) working days after the employee's receipt of the Mayor's Office written decision. Upon receipt of such written notice, the Mayor's Office shall, within thirty (30) days, refer the matter to the Brigham City Employee Personnel Board. The Brigham City Employee Personnel Board shall consist of five (5) members, three (3) of whom shall be those previously elected from the Brigham City Employee Coordination Committee as set forth in section 2-3 of this manual, and two (2) of whom shall be members of the City Council, selected by the Mayor. In the event any of the three (3) members elected from the Brigham City Employee Coordination Committee happen to be employed in the same department as the employee appealing the disciplinary decision or making the grievance, the Mayor shall select replacement members (to serve on the board for purposes of the appeal) from among all of the current Brigham City employees.

The Brigham City Employee Personnel Board shall then conduct any investigation which it deems appropriate and render its decision within five (5) working days from the conclusion of its investigation. The decision of the Brigham City Employee Personnel Board shall be in writing and delivered to the Mayor's Office, the employee and the employee's immediate supervisor. The written decision of the Brigham City Employee Personnel Board shall also set forth the manner, if any, in which the employee can pursue the matter to the next step.

STEP THREE: THE BRIGHAM CITY COUNCIL

If the employee is not satisfied with the decision of the Brigham City Employee Personnel Board, the employee may deliver a letter requesting consideration by the Brigham City Council to the Mayor's Office within five (5) working days after the employee's receipt of the Brigham City Employee Personnel Board's written decision. Upon receipt of such written notice, the City Administrator shall, within thirty (30) days, refer the matter to the Brigham City Council.

The Brigham City Council shall then conduct any investigation which it deems appropriate and render its decision within five (5) working days from the conclusion of its investigation. The decision of a majority of the members of the Brigham City Council shall be in writing and delivered to the Mayor's Office, the employee and the employee's immediate supervisor. The decision of the Brigham City Council shall be final and binding upon all of the involved parties.

7-4 Suspension Pending Investigation and Decision

At the City's sole discretion, an employee may be suspended (with or without pay) pending an investigation. If after an investigation the charge is found to be without merit, the employee shall be restored to his or her position and/or compensated for any lost pay.

7-5 Causes for Discipline

Each of the following shall constitute cause for discipline, up to and including discharge. The offenses listed are not intended to be comprehensive, and the enumeration of these commonly-accepted violations shall not be deemed to prevent the discipline of an employee for other violations not enumerated.

- Personal or gross negligence on or off duty which prevents or substantially hampers job performance
- Negligently using, abusing, or damaging City property
- Any violation of City or departmental policies or procedures
- Violations of commonly accepted employment standards
- Sexual harassment
- Illegal discrimination
- Disregard for safety rules
- Insubordination by refusing superior's order, verbal abuse of a superior, or unwillingness to submit to proper authority

- Failure to follow specified job instructions
- Unwillingness to work harmoniously with other employees
- Unauthorized solicitation on City property
- Distributing unauthorized printed matter on City property
- Tardiness
- Creating or contributing to unsanitary conditions
- Unauthorized operation of tools, machinery, equipment
- Gambling on City property
- Failure to timely report an injury or accident
- Unauthorized sleeping on the job during work hours or leaving the site early without permission
- Abuse of personal leave
- Fighting or attempting to provoke a fight on City property
- Deliberately restricting output
- Failure to maintain production and performance standards
- Theft
- Possession and/or use of alcoholic beverages or controlled substances while on duty
- Possession and/or use of alcoholic beverages or controlled substances while operating City equipment
- Reporting for work while under the influence of alcoholic beverages or controlled substances
- Assault on a supervisor or any other City employee
- Threatening or intimidating other City employees or supervisors
- Falsifying City records
- Intentionally misusing, abusing, or damaging City property or the property of another City employee
- Unauthorized removal, falsification, or alteration of City records or intentional release of confidential information
- Failure to report for work without appropriate notice
- Failure to obtain pre-approval for any overtime
- Repeated violation of rules and procedures
- Use of profanity or any offensive language directed at any individual
- Dishonesty, deceit or fraud
- Excessive complaining or poor attitude
- Spreading of rumors and gossip
- The commission of any criminal conduct
- Any conduct which reflects negatively upon the City or upon the character of any City employee
- Brandishing or exhibiting any dangerous weapon in an angry or threatening manner, or destroying property or throwing objects in a manner perceived to be threatening. This prohibition does not include law enforcement officers acting in their official capacity
- Inappropriate use of City computers including e-mail, the internet and chat rooms
- Inappropriate use of City cell phones including excessive personal use, text messaging and the Internet